



(3)
SINGLE BENCH

CF 102

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION (C) NO. 6586 / 2006

**PETITIONERS/
DEFENDANTS**

1. Smt. Gigibai, aged about 72 years W/o. Late Motilal Agrawal (Widow)
2. Pawan Kumar, aged about 41 years
3. Gopal Agrawal, aged about 40 years
4. Ajay Kumar Agrawal, aged about 38 years

No. (1) being widow and Nos. (2) to (4) being sons of Late Motilal Agrawal. All residents of Gudiyari, Raipur (C.G.)

5. Smt. Vimladevi, aged about 53 years, W/o Shri Harbux Agrawal, R/o Kharsiya, District Raigarh.
6. Smt. Saroj Agrawal, aged about 38 years, W/o. Shri Rajesh Kumar Agrawal, R/o. Bazar Chowk, Amgaon, District Bhandara (Mah.)
7. Smt. Satosh Agrawal, aged about 43 years, W/o Shri Basant Agrawal, C/o. Kundanmal Tikaram, Murri Road, Bajpai Ward, Gondiya, Dist. Bhandara.
8. Manju Agrawal, aged about 31 years, D/o. Late Shri Motilal Agrawal, R/o. Ganj Para, Raipur (C.G.)
(At the time of institution of the Civil Suit was a minor of 13 years and was represented through mother).

P.R. No. 6492/06
Presented by Smt. Sh. Raju
dated 20/11/06



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VERSUS

**RESPONDENTS/
PLAINTIFFS**

:

1. Motilal Goel, S/o Shri Raj Narayanji, aged about 61 Years.
2. Atul Kumar Goel, aged about 44 years, S/o. Niranjnall Goel.
3. Rajiv Kumar Goel, aged about 40 years, S/o Shri Ram Krishna Goel.
4. Kanhaiyalal Goel, aged about 45 years, S/o. Shri Om Prakash Goel.

All residents of Fafadih,
Raipur, Tehsil & District
Raipur (C.G.)

**WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA**

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 6586/2006

PETITIONER : Smt. Gigibai and seven others.

VERSUS

RESPONDENTS : Motilal Goel and three others.

ORDER BE POSTED FOR /1 -1-2007

Sd/-
Dhirednra Mishra
Judge

CHHATTISGARH HIGH COURT, BILASPUR

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 6586/2006

PETITIONER : Smt. Gigibai and seven others.

VERSUS

RESPONDENTS : Motilal Goel and three others.

Shri Ravish Agrawal learned Sr. Advocate with Shri Sumesh Bajaj for the petitioners.

ORDER

(11-01-2007)

Dhirendra Mishra,J

The petitioners have impugned the order dated 15.2.2000 passed by the First Civil Judge Class II, Raipur in Civil Suit No. 7-A/1999 as the application preferred under Section 10 of the Code of Civil Procedure for staying the proceedings of the suit till the decision of First Appeal No. 246/1995 pending in the High Court has been rejected.

2. Grievance of the petitioners is that Civil Suit No. 23-A/1985 for specific performance of the contract was instituted by the petitioners in the Court of District Judge, Raipur. Case of the petitioners in the above suit was that they had entered into an agreement for sale of the disputed house prior to execution of the sale deed in favour of respondents 1 to 4 and the sale deed in favour of respondents 1 to 4 has been executed with an object to frustrate the contract with the plaintiffs. The above suit was dismissed vide judgment dated 16.2.1995 against which the petitioners preferred First Appeal No. 246/1995 which is pending in this High court. During the pendency of the civil suit the respondents instituted a suit for

eviction against Motilal Agrawal with partnership firm. The suit was filed with the averment that they are the owners of the suit house which they purchased through registered sale deed executed by one Shiv Narayan. The suit was filed on the grounds enumerated under section 12 (1)(a), 12 (1)(c) and 12(1) (e) of the M.P. Accommodation Control Act. Application under Section 10 of the Code of Civil Procedure was filed by the petitioners on the ground that parties and issues in the former suit for specific performance are common and therefore, the proceedings in the present suit may be stayed till the decision of First Appeal No. 246/1995. The above application was rejected vide order dated 15.2.2000 vide annexure (P-9). Civil Revision preferred by the petitioners was dismissed as withdrawn in view of the subsequent amendment in the provisions of Section 115 of the Code of Civil Procedure.

3. Learned counsel for the petitioners submits that the matter in issue in the present suit is directly and substantially in issue in the previously instituted suit and therefore, the provisions of Section 10 of the Code of Civil Procedure are squarely attracted to the facts of the case. However, the Court below even after holding that if both the suits are independently decided then the possibility of different conclusions cannot be ruled out, has rejected the application with an observation that the judgment passed by the First Appellate Court shall be filed by the petitioners and only thereafter issue No.1 which relates to res judicata can be considered. Learned counsel for the petitioners placed reliance on the decision of High Court of Madhya Pradesh in the matter of Sheikh Munna Vs. Kaushal

son and the respondents on the other side. In the matter of Sheikh Munna Vs. Kaushal Kishore Verma (supra), the application under Section 10 of the Code of Civil Procedure was allowed as two material issues pertaining to title of the non applicant and title of the petitioner which he claimed under the agreement of purchase were identical to the former suit which was the suit for specific performance of the contract and considering this aspect the proceedings in the subsequent suit were stayed. However, in the present case from perusal of the issues framed by the trial Court on the basis of pleadings of the respective parties it is observed that the question involved for adjudication of the present suit whether there is relationship of landlord and the tenant between the parties and whether the defendants have disclaimed the ownership of the plaintiffs, whether the plaintiffs require the suit accommodation bonafidely for the purpose of their own business or whether the plaintiffs are entitled for arrears of rent and damages as claimed etc. In the matter of P.V. Shetty Vs. B.S. Giridhar (supra) the question involved in the above case was that the eviction suit was filed by the landlord prior to the institution of the suit. The tenant had filed an application before the Rent Controlling Authority for fixation of fair rent and in the aforesaid circumstances the tenant filed an application for interim stay of the further proceedings of the suit till the disposal of the application for fixation of fair rent. The Supreme Court considered that fixation of fair rent will have the impact on the outcome of the suit stayed the proceedings in the eviction suit till the fixation of the fair rent. However, in the instant case no such contingency exists and

therefore, the judgments cited by the petitioners have no application in the

present case.

6. From the pleadings of the petitioner in the former suit which has

been dealt with in the judgment of the District Judge, it transpires that the petitioners were the tenants of the seller since 1958-59 who according to the plaint allegations entered into contract for sale and received earnest money and passed a receipt in acknowledgement of the same with a stipulation that balance of consideration would be paid within two years from the date of the contract and thereafter the sale deed was to be executed. However, the accommodation was sold to the respondents. Under the M.P. Accommodation Control Act landlord is required to prove the contract of tenancy with the tenant and the grounds on which the eviction is sought. In the above proceedings the Court is not required to go into serious question of title, otherwise, the purpose of the Act would stand frustrated.

7. In view of the above legal position this Court is of the considered

opinion that for the purpose of present suit what the plaintiffs are required to establish in the trial is whether the relationship of landlord and tenant existed between the petitioners/defendants and respondents/plaintiffs and whether the plaintiffs are able to make out a case for eviction on the grounds enumerated in the M.P. Accommodation Control Act. This Court is fortified in its view by the judgment of the Supreme Court in the matter of Radha Devi Vs. Deep Narayan Mandal and others reported in (2003) 11 SCC 759 wherein it has been held that the eviction proceedings

initiated during the pendency of the title suit filed in respect of the same premises and between the same parties cannot be stayed under Section 10 of the Code of Civil Procedure since the Rent Court is not required to decide the question of title and the Court can proceed with the trial of eviction suit even if it was filed during the pendency of the title suit involving the same parties as well as the subject matter.

8. Though the reasons assigned by the trial Court for rejecting the application for stay are not in order, nevertheless, considering the law laid down by the Supreme Court in the abovementioned judgment, I am of the opinion that exercise of the jurisdiction by the trial Court in passing the impugned order shall not occasion failure of justice or grave injustice to the petitioner.

9. In view of the aforesaid discussion this Court is of the view that the instant petition has no substance and therefore, the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

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